Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1148

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.,

Appellant,

versus

HUGH B. COTTRELL, M.D., HEALTH OFFICER, STATE OF MISSISSIPPI,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF MISSISSIPPI

APPEAL DOCKETED MARCH 12, 1975
PROBABLE JURISDICTION NOTED MAY 12, 1975

SUPREME COURT OF THE UNITED STATES

October Term, 1974

No. 74-1148

The Great Atlantic & Pacific Tea Company, Inc.,
Appellant

vs.

Hugh B. Cottrell, M.D., Health Officer,
State of Mississippi, Appellee

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Oct. 25, 1972 — Plaintiff The Great Atlantic & Pacific Tea Company, Inc.'s petition filed in the U.S. District Court for Southern District of Mississippi, Jackson Division.

Nov. 20, 1972 — Defendant Hugh B. Cottrell's answer.

Nov. 24, 1972 — Opinion of single-judge court.

Jan. 5, 1973 — Plaintiff's motion to amend to include a request that a three-judge district court be convened.

Nov. 16, 1973 — Stipulation of facts filed and trial.

Oct. 28, 1974 — Opinion of three-judge court.

Nov. 13, 1974 — Judgment of three-judge court.

Dec. 11, 1974 — Plaintiff's Notice of Appeal to the Supreme Court of the United States filed.

May 19, 1975 — Copy of order of Supreme Court of the United States noting probable jurisdiction.

SUIT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF

United States District Court
Southern District of Mississippi
Jackson Division

The Great Atlantic & Pacific Tea Company, Inc.

versus No. 72-J-212(R)

Hugh B. Cottrell, M.D., Health Officer,
State of Mississippi

Plaintiff, The Great Atlantic & Pacific Tea Company, Inc., through undersigned counsel, complains as follows:

1.

This Court has jurisdiction of this suit pursuant to provisions of Sections 1331 and 2201, Title 28 United States Code. The matter in controversy exceeds the sum of value of $10,000.00 exclusive of interest and cost and arises under the Constitution of the United States. There exists between the plaintiff and defendant an actual justiciable controversy in respect to which plaintiff requires injunctive relief as well as a declaration of rights by this Court. Venue properly is laid in this district and division. 28 U.S.C. §§ 1391 (b), 1393 (a).

2.

Plaintiff, The Great Atlantic & Pacific Tea Company, Inc., incorporated in Maryland, is engaged in the

business of processing dairy products at its Kentwood, Louisiana plant for delivery to its retail stores in Louisiana and Mississippi.

3.

The Kentwood plant receives a large supply of raw milk from producers in Mississippi.

4.

The Kentwood A & P milk plant has received a Louisiana Department of Health rating, made on January 26, 1972, recording the plant's score — 100 per cent and producer's score — 94.86 per cent; a copy of the rating report is attached to and made a part of this complaint as if copied herein *in extenso*.

5.

Defendant is vested with powers to supervise, investigate, and regulate the fluid milk industry of the State of Mississippi in the public interest.

6.

Defendant is charged with enforcing Section 11 of the Mississippi State Board of Health "Regulations Governing the Production and Sale of Milk and Milk Products," a copy of which is attached hereto and made a part hereof, which, *inter alia*, refuses entry into Mississippi of milk processed out of state unless the sister state accepts Mississippi-processed milk on a reciprocal basis.

7.

Plaintiff has requested permission to deliver milk to its retail outlets in Mississippi and has been denied same by the State of Mississippi for the sole reason that plaintiff has not supplied defendant with a "Certification of Reciprocity" from the State of Louisiana.

8.

Plaintiff alleges that the defendant's refusal to permit plaintiff to deliver out-of-state processed milk to its Mississippi retail outlets violates the Commerce Clause of the United States Constitution, Article 1, Section 8, Clause 3.

9.

Plaintiff alleges that defendant's action constitutes a real and irreparable injury and it has no other adequate remedy at law.

10.

In order to protect plaintiff's rights it is necessary that this Court permanently restrain and enjoin the defendant, his agents, employees, and all other persons acting or claiming to act in his behalf, from excluding plaintiff from doing business in the State of Mississippi pursuant to aforementioned Section 11.

11.

Upon information and belief plaintiff alleges that during the pendency of these proceedings the defen-

dant will continue interfering in plaintiff's free exercise of selling milk in the State of Mississippi; therefore, it is necessary that this Court issue a preliminary writ of injunction in the form and substance of the permanent injunction mentioned above in order to protect complainant's rights.

WHEREFORE plaintiff respectfully prays:

1.

That the defendant be duly ordered to show cause on a day and at an hour to be fixed by this Court why a preliminary injunction enjoining and prohibiting defendant, his agents, employees, and all other persons acting or claiming to act in his behalf, from excluding plaintiff from doing business in the State of Mississippi pursuant to the Mississippi State Board of Health "Regulations Governing the Production and Sale of Milk and Milk Products," Section 11.

2.

That, after due proceedings had, judgment be rendered herein in favor of the plaintiff, The Great Atlantic & Pacific Tea Company, and against the defendant, Hugh B. Cottrell, State Health Officer, decreeing the above-described acts of the defendant to be illegal, unconstitutional, injurious to plaintiff, and an impairment of its rights, perpetuating the said preliminary writ of injunction and making it permanent in the form and substance of the preliminary injunction mentioned hereinabove; and for all costs of these proceedings.

3.

That the Mississippi State Board of Health Regulations, Section 11, insofar as here pertinent, be declared illegal and unconstitutional.

That judgment issue in favor of plaintiff for such other and further relief as the law and the facts support.

RESPECTFULLY SUBMITTED,

(Signed) JULIAN R. MURRAY, JR.
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Please Serve:
Hugh B. Cottrell, M.D.,
Mississippi State Health Officer
Jackson, Mississippi 39205

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
PUBLIC HEALTH SERVICE
FOOD AND DRUG ADMINISTRATION

INTERSTATE MILK SHIPPER REPORT

INTERNAL USE ONLY

1. NAME OF SHIPPER
The Grant A & P Tea Co.

2. CITY
Kentwood

3. STATE
La.

4. STREET

PERMIT NUMBER

SURVEY DATA

MORE THAN ONE GRADE OF MILK RECEIVED [ ] YES [X] NO

	PRODUCERS	RECEIVING STATIONS	PASTEURIZATION OR DRYING PLANT	PASTEURIZED MILK	ENFORCEMENT
TYPE OF RATING (Area or Individual)	ARF		Individual		
RATING (%)	96		100	98	98
DATE OF RATING	3-19-71		1-26-72		3-71
TOTAL NUMBER	984		1		
NUMBER INSPECTED	213		1		
VOLUME RECEIVED DAILY (Pounds)			8218		

SURVEY AGENCY (07-71): [X] SHD [ ] SDA [ ] LSD
SURVEY OFFICER: Jack Blanks
DATE SURVEY OFFICER CERTIFIED: 5/68
EARLIEST RATING DATE: MONTH 3, DAY 19, YEAR 71

AGENCY PROVIDING CONTINUOUS SUPERVISION TO SUPPLY: La. State Dept of Health

LABORATORY CONTROL

APPROVED LABORATORY NUMBER OR NAME AND ADDRESS: La. State Dept of Health, New Orleans
DATE OF LAST SURVEY: 3/12/70
DAIRY FARM TESTS APPROVED: BRC [X] a. [ ] b. | PLATE [X] a. [ ] b. | PHOS [X] a. [ ] b. | RDC [ ] a. [ ] b.

RAW MILK TESTS APPROVED

VIABLE COUNTS: a. 1701 b.
INHIBITORS: a. [X] b. [ ]
SCREENING TESTS: a. MWT b.
CONFIRMATORY TESTS: a. IKISCC b.

DATE OF LAST TWO DAIRY SAMPLES: a. 3-11-69 b. 5/29-69
APPROVED DAIRY LABORATORY AND DATE: La. State Dept of Health, N.O.
WATER TESTS APPROVED: [X] YES [ ] NO

PUBLICATION (Written permission from shipper must be filed at Regional Office of USPHS prior to publication of ratings)
LETTER OF PERMISSION TO PUBLISH IS TRANSMITTED WITH THIS REPORT: [X] YES [ ] NO

10. SUBMISSION OF REPORT BY STATE AGENCY
DATE OF REPORT: 2-7-72
SUBMITTED BY (Signature and Title): Raleigh J. Richard
Raleigh J. Richard, Head, Div. of Milk & Dairy Products

FOR FDA REGIONAL OFFICE USE ONLY
Written permission from shipper dated ____ on file and publication of ratings recommended.
DATE
SIGNATURE (FDA Reporting Officer)

FD FORM 2359, (5/71)

BEST COPY AVAILABLE

SECTION 11. MILK AND MILK PRODUCTS FROM POINTS BEYOND THE LIMITS OF ROUTINE INSPECTION

Milk and milk products from points beyond the limits of routine inspection of the state of Mississippi or its police jurisdiction, may be sold in the state of Mississippi or its police jurisdiction, provided they are produced, pasteurized, and labeled under regulations which are substantially equivalent to this Regulation and have been awarded an acceptable milk sanitation compliance rating of 90 percent or above made by a state milk sanitation rating officer certified by the U. S. Public Health Service, and Provided further, that the regulatory agency who has jurisdiction accepts Grade A milk and milk products produced and processed in Mississippi on a reciprocal basis. The health authority is authorized to require and conduct laboratory analysis and investigations to determine if the milk and milk products are in compliance with this Regulation.

Opinion of single-judge court is found at page 1a of Appellant's Jurisdictional Statement.

Opinion of three-judge court is found at page 8a of Appellant's Jurisdictional Statement.

Judgment of three-judge court is found at page 3a of Appellant's Jurisdictional statement.